

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, January 19, 2022**

**Hearing Room 1568**

10:00 AM

**2:20-10987 Steve Lewis**

**Chapter 7**

Adv#: 2:20-01114 LANGLOIS FAMILY LAW APC v. LEWIS

- #1.00** Show Cause Hearing  
RE: [127] Plaintiff shall appear and show cause, if any  
there be, why summary judgment should not be entered in Defendant's favor,  
for the reasons set forth in the *Preliminary Findings and Conclusions*

Docket 1

**Tentative Ruling:**

1/18/2022

**Note: Parties must appear by telephone. The courtroom is undergoing renovation. To make a telephonic appearance, parties should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Court will enter summary judgment in favor of Defendant.

**Pleadings Filed and Reviewed:**

- 1) Order: (1) Requiring Plaintiff to Show Cause Why Summary Judgment Should Not Be Entered in Defendant's Favor and (2) Vacating Trial [Doc. No. 127] (the "OSC")
- 2) Written Response to Order to Show Cause Why Summary Judgment Should Not Be Entered in Defendant's Favor [Doc. No. 130]
- 3) Opposition By Defendant Steve Lewis to Plaintiff's Written Response to Order to Show Cause Why Summary Judgment Should Not Be Entered in Defendant's Favor [Doc. No. 131]
  - a) Evidentiary Objections in Support of Opposition By Defendant Steve Lewis to Plaintiff's Written Response to Order to Show Cause Why Summary Judgment Should Not Be Entered in Defendant's Favor [Doc. No. 132]
- 4) Reply to Defendant's Opposition to Order to Show Cause Why Summary Judgment Should Not Be Entered in Defendant's Favor [Doc. No. 133]

**I. Facts and Summary of Pleadings**

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**A. Background**

In December 2019, Langlois Family Law, APC ("Plaintiff") [Note 1] obtained a judgment in the Los Angeles Superior Court against Steve Lewis ("Defendant") in the amount of \$152,540.75 (the "State Court Judgment," and the action giving rise to the State Court Judgment, the "State Court Action"). The State Court Judgment is based upon Defendant's failure to pay Plaintiff for legal services that Plaintiff provided to Defendant in a marital dissolution proceeding.

Defendant filed a voluntary Chapter 7 petition on January 29, 2020 (the "Petition Date"). On May 1, 2020, Plaintiff filed a *Complaint Objecting to the Debtor's Discharge Pursuant to 11 U.S.C. § 727(a)(4)* [Doc. No. 1] (the "Original Complaint"). On July 15, 2020, the Court dismissed the Complaint, but gave Plaintiff leave to amend. On July 20, 2020, Plaintiff filed the operative *First Amended Complaint Objecting to the Debtor's Discharge Pursuant to 11 U.S.C. § 727(a)(4)* [Doc. No. 26] (the "Complaint"), which alleges that Defendant should be denied a discharge for knowingly and fraudulently making false oaths and accounts on his bankruptcy schedules. Specifically, Plaintiff alleges that Defendant's schedules materially understate the income that Defendant receives from CORE Real Estate Group, Inc. ("CORE"), and also materially understate Defendant's ownership interest in CORE.

The Complaint's allegations are predicated upon statements that Defendant allegedly made to Plaintiff during the course of Plaintiff's representation of Defendant in the marital dissolution proceeding. The alleged statements concern Defendant's practice of employing various tactics to understate the true amount of compensation that Defendant receives from his employer. The tactics that Defendant allegedly admitted to using include (1) misdirecting a portion of his real estate sales to other agents, with the understanding that the other agents would later return to him the commissions they received on the misdirected sales; (2) overstating unreimbursed business expenses to artificially decrease reported income; and (3) manipulating the books and records of his employer to understate bonus income.

According to a sworn declaration dated June 19, 2020 [Doc. No. 19] (the "Langlois Decl."), Plaintiff learned the information forming the basis for the Complaint's allegations while representing Defendant in the dissolution proceeding:

I have reviewed in depth the debtor's bankruptcy petition and schedules, and I have contrasted the same with the financial disclosures, oral and written, which he provided to me in the course of my representation of him in his dissolution and post-dissolution proceedings. Pursuant to my analysis of such

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disclosures, it appears that the defendant has intentionally understated his gross wages and has improperly expensed thousands of dollars of expenses each month, which are not allowed by the IRS, in order to understate and misrepresent his monthly disposable income.

Langlois Decl. at ¶ 8.

On December 9, 2021, the Court issued an order requiring Plaintiff to show cause why summary judgment should not be entered in Defendant's favor. Doc. No. 127 (the "Order to Show Cause"). The Order to Show Cause required Plaintiff to respond to the following *Preliminary Findings and Conclusions* made by the Court:

In *Dubrow v. Rindlisbacher (In re Rindlisbacher)*, the court held that an attorney who pursued a § 727 complaint against his former client "had violated his ethical and legal obligations ... in pursuing the complaint." 225 B.R. 180, 181 (B.A.P. 9th Cir. 1998). The § 727 complaint was based upon confidential information that the attorney had learned while representing the debtor in a dissolution proceeding. *Id.* The court granted summary judgment in favor of the debtor, holding that "where the attorney obtains information in confidence from the client, the attorney cannot later use that information, whether independently verified or not, as the basis of a proceeding against the client to deny discharge." *Id.* at 185.

The *Rindlisbacher* court acknowledged that "an attorney may reveal confidences and secrets where it is necessary to do so to get paid," but held that this exception did not apply in the context of a § 727 complaint:

Debtor acknowledges that the purpose of this adversary proceeding to deny debtor a discharge is to enable Dubrow to collect his fees. That does not necessarily mean that the use of the otherwise confidential communication to deny debtor a discharge is the type of use that is allowed under the ethical rules and the privilege. The idea behind the exception to the confidences rule for collection of an attorney's fee is that the client has breached a duty by failing to pay, and the attorney must be able to defend himself against the client's charges of attorney misconduct. In other words, the client puts the attorney's actions in issue and, in fairness, the attorney must be allowed to defend, even if that defense involves the use of communications that the attorney would otherwise be bound to maintain as

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confidential.

A debtor's pursuit of a discharge is not a breach of the duty to pay; it is a right provided by the Bankruptcy Code. By seeking a discharge the client does not in any way call into question the validity of the attorney's fee or the attorney's actions. He merely seeks to obtain a benefit that the law allows. Because there is no breach of duty by the client, and no claim against the attorney which the attorney must in fairness be permitted to defend, the exception to the confidences rule for disclosure of communications necessary to allow the attorney to collect a fee does not apply.

*Id.* at 183.

The court also rejected the plaintiff/attorney's contention that pursuit of the § 727 complaint did not violate his ethical duties because he had independently verified the confidential information that formed the basis of the complaint:

The purpose of the ethical and privilege rules regarding client confidences is to encourage full disclosure to the attorney free from fear that the information will be disclosed to others, thereby "promot[ing] broader public interests in the observance of law and administration of justice." *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981). Allowing an attorney to circumvent the confidences rules by independent verification would defeat that purpose and could make clients reluctant to be fully forthcoming in their discussions with their attorneys.

*Id.* at 184–85.

Here, all the evidence Plaintiff seeks to present derives from either (1) confidential information that Plaintiff obtained while representing Defendant in the marital dissolution proceeding, or (2) information which Plaintiff could not have obtained unless he had first learned the confidential information.

Examples of evidence falling within the first category include without limitation Plaintiff's contemplated testimony that:

- 1) During the course of the dissolution proceeding, Defendant represented to Plaintiff that Defendant routinely uses various tactics to underreport

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- the income he receives from his employer, including (a) manipulating his employer's books and records to understate bonus income; (b) inflating unreimbursed business expenses; (c) misdirecting a portion of his real estate sales to other agents, with the understanding that the other agents would later return to him the commissions they received on the misdirected sales; and (d) over-withholding from his paycheck to generate an otherwise non-exempt tax refund.
- 2) During the course of the dissolution proceeding, Defendant represented to Plaintiff that his monthly expenses were \$368 for healthcare and \$100–\$150 for entertainment, gifts, and vacation.
  - 3) During the course of the dissolution proceeding, Defendant made representations to Plaintiff regarding his monthly bonus income.

To the extent that Plaintiff's evidence does not consist of confidential information, presentation of the evidence still violates Plaintiff's duty of confidentiality because Plaintiff used confidential information to obtain the evidence. For example, Plaintiff points to Defendant's bank account records—which Plaintiff obtained in discovery in this action—to bolster Plaintiff's contention that Defendant understates his income by inflating claimed unreimbursed business expenses. But Plaintiff first learned that Defendant allegedly understates his income in this manner while representing Defendant in the dissolution proceeding. By conducting discovery and questioning Defendant regarding this issue, Plaintiff was leveraging confidential information against his former client. As explained in *Rindlisbacher*, an "attorney who brings an action against a former client based on facts the attorney learned in confidence, and with regard to which no exception or waiver applies, breaches [the duty of confidentiality] by filing the action." 225 B.R. at 184.

Plaintiff's breach of his duty of confidentiality infects all of the allegations and evidence in this proceeding. All of Plaintiff's evidence is intended to establish that Defendant is not entitled to a discharge because he has knowingly and fraudulently understated his income and assets. Plaintiff has admitted in a sworn declaration that he learned of Defendant's alleged practice of abusing the Bankruptcy Code in this manner while representing Defendant in the dissolution proceeding:

I served as the lead Family Law Attorney for debtor during his hotly contested dissolution proceeding and one post-judgment request for orders.

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I have first-hand knowledge through my analysis of all aspects of his financial history and admissions by Defendant regarding debtor's financial history, personal and business financial practices, assets, liabilities, and general financial condition....

*Based upon my knowledge of Defendant's personal and business practices* and his disclosures in this bankruptcy action, Defendant's income, expenses and deductions have been improperly manipulated in order to understate the actual amount of Defendant's income (including bonuses and/or commissions), and to overstate the actual and/or legitimate amount of Defendant's monthly expenses....

*Based upon my knowledge of Defendant's personal and business practices* and his disclosures in this bankruptcy action, I am also informed and believe that the defendant knowingly and fraudulently, in connection with the instant bankruptcy case, has made false oaths and accounts....

I know through my representation of debtor that since at least 2003 he has planned to file and has actually filed a Chapter 7 bankruptcy petition and received a Chapter 7 bankruptcy discharge approximately every 7 years.... Defendant has admitted to me his improper personal financial practice of successive Chapter 7 bankruptcy filings (as early and as often as he can), by which he purposely avoids the payment of large income tax liabilities, as well as other debts he has incurred without any intention of paying. The defendant has carefully planned to file the instant Chapter 7 bankruptcy petition.

Langlois Decl. at ¶¶ 2–7 (emphasis added).

Because Plaintiff's § 727(a)(4) claim is predicated upon confidential information, the Complaint "is barred by [Plaintiff's] ethical obligations and his obligations under the attorney client privilege to preserve client confidences," *Rindlisbacher*, 225 B.R. at 185. Like the debtor in *Rindlisbacher*, Defendant is entitled to the entry of summary judgment in his favor.

Order to Show Cause at 3–6.

**B. Summary of Papers Filed in Connection with the Order to Show Cause**

Plaintiff asserts that Defendant waived the attorney-client privilege by participating in an arbitration proceeding regarding the reasonableness of the fees that

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Plaintiff charged Defendant in the marital dissolution proceeding (the "Arbitration"). To support the contention that Defendant waived the privilege, Plaintiff points to language in a retainer agreement that Defendant signed (the "Retainer Agreement"). The Retainer Agreement states that "any and all disputes arising out of or connected with our attorney client relationship and/or this retainer agreement shall be determined by confidential binding arbitration," and that in such arbitration, Defendant waives "the right to have the California Rules of Evidence govern the admissibility of evidence." Doc. No. 130, Ex. 1. Plaintiff further asserts that under principles of issue preclusion, the Court is bound by Defendant's alleged waiver of the attorney-client privilege because the findings made by the arbitrator were subsequently confirmed in the State Court Judgment.

Defendant disputes that he waived the attorney-client privilege by participating in the arbitration. He argues that even if he did waive the privilege, that waiver was limited to the arbitration and does not apply to this dischargeability action. Defendant maintains that the issues adjudicated by the arbitrator are different from the matters at issue in this proceeding.

Plaintiff disputes Defendant's contention that any waiver of the attorney-client privilege could be limited to the arbitration. Plaintiff contends that the "code and case law regarding privilege waivers make no distinction between a waiver for a limited purpose and a waiver for all purposes." Doc. No. 133. At 3.

## **II. Findings and Conclusions**

Cal. Evid. Code § 912(a) provides:

Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege) ... is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege.

However, "[a] disclosure that is itself privileged is not a waiver of any privilege." Cal. Evid. Code § 912(c).



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The Retainer Agreement governing Plaintiff's representation of Defendant in the marital dissolution proceeding required that "any and all disputes arising out of or connected with our attorney client relationship and/or this retainer agreement shall be determined by *confidential* binding arbitration" (emphasis added). It further provided that in such confidential binding arbitration, Defendant waived "the right to have the California Rules of Evidence govern the admissibility of evidence."

Pursuant to the arbitration provisions of the Retainer Agreement, a binding attorney's fee arbitration hearing between Plaintiff and Defendant occurred on May 17, 2019. Retired Superior Court Judge John W. Ouderkirk served as the arbitrator (the "Arbitrator"). In a Final Arbitration Award dated July 30, 2019, Judge Ouderkirk made the following findings:

The Arbitrator finds that all evidence presented by [Plaintiff] in the Arbitration proceeding was true and accurate. Having heard all documentary and witness evidence and oral arguments presented by both parties to the arbitration, the Arbitrator finds in favor of [Plaintiff's] claim.

The Arbitrator finds that [Defendant] had incurred and owed to [Plaintiff] the sum of \$144,497.95 in outstanding attorney's fees and costs, as of April 30, 2019, including \$122,315.58 in unpaid attorney's fees and costs and \$22,182.37 in accrued finance charges, pursuant to the terms of their Retainer Agreement. The Arbitrator finds that the attorney's fees incurred were more than reasonable and were necessary in light of the complexity of litigation in [the marital dissolution proceeding] and [Plaintiff's] success at trial on behalf of [Defendant]. The Arbitrator finds that the services provided and the costs incurred by [Plaintiff] on behalf of [Defendant] were reasonable and actual and in accordance with the terms and conditions of the Retainer Agreement.

**Final Arbitration Award at 2. [Note 2]**

The Final Arbitration Award contains no discussion of or findings related to any of the allegations at issue in this dischargeability action, such as Plaintiff's allegation that during the marital dissolution proceeding, Defendant represented to Plaintiff that Defendant routinely uses various tactics to underreport the income he receives from his employer.

Defendant's execution of the Retainer Agreement, followed by Defendant's subsequent participation in the Arbitration, did not constitute a waiver of the attorney-client privilege for purposes of this dischargeability action. First, the Retainer



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Agreement provided that "disputes arising out of or connected with" the attorney client relationship between Plaintiff and Defendant "shall be determined by *confidential* binding arbitration." Consequently, there is no merit to Plaintiff's contention that the issues resolved by the Arbitrator were a matter of public record, and that accordingly Defendant waived the attorney-client privilege with respect to those issues. *See* Plaintiff's Reply Brief [Doc. No. 133] at 4 ("Of course, at arbitration, as at a trial and in the absence of specific rules excluding the public, any evidence that the arbitrator allows to be admitted into evidence and upon which the arbitrator relies in making decisions, is a public record. Thus, disclosures by Plaintiff of any otherwise privileged attorney-client communications at the arbitration are disclosures to the public.").

Cal. Evid. Code § 912(a) states that "[a] disclosure that is itself privileged is not a waiver of any privilege." Cal. Evid. Code § 912(c). Because the Arbitration was confidential, any disclosures made by Defendant in connection with the Arbitration were privileged and fall within the safe harbor created by Cal. Evid. Code § 912(c).

Even if Defendant's execution of the Retainer Agreement and his participation in the Arbitration did amount to a waiver of the attorney-client privilege, the scope of that waiver was limited to the Arbitration and does not extend to this dischargeability action. Contrary to Plaintiff's assertion, a client's waiver of the privilege with respect to one communication does *not* waive the privilege with respect to *all* communications between the client and the attorney. In *Sony Computer Ent. Am., Inc. v. Great Am. Ins. Co.*, 229 F.R.D. 632, 635 (N.D. Cal. 2005), the court addressed the scope of a waiver of the attorney-client privilege. It explained that the "scope of [the] waiver is narrowly defined and the information required to be disclosed must fit strictly within the confines of the waiver." *Id.* The *Sony* court found that the privilege had been waived with respect to an e-mail because the e-mail had been disclosed to third parties. However, it declined to find that the privilege had been waived with respect to other issues in the litigation that were not related to the e-mail:

[T]he Court concludes that the proper scope of the waiver includes not only the actual contents of the Sacks e-mail but also any follow-up discussions between Crosby Heafy and SCEA regarding the e-mail. The Court rejects American Home's argument that the waiver should extend to matters regarding coverage or timeliness of SCEA's tender to American Home because these subjects were not discussed in the e-mail between Ms. Sacks and Mr. Vu.

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*Sony*, 229 F.R.D. at 635 (N.D. Cal. 2005).

The issues raised in the Arbitration are completely different from the issues raised in this dischargeability action. The issue in the Arbitration proceeding was whether the fees charged by Plaintiff for representing Defendant in the dissolution proceeding were reasonable. The issue in this dischargeability action is whether Defendant engaged in wrongful conduct sufficiently egregious to warrant the denial of a bankruptcy discharge by, among other things, falsifying his income and making other misrepresentations to the Bankruptcy Court. Therefore, even if Defendant had waived the privilege in the Arbitration proceeding—which he did not—that waiver did not extend to this dischargeability action. The narrow scope of the waiver means that a waiver with respect to one issue (the reasonableness of attorney's fees) cannot extend to a completely different issue (whether Defendant misrepresented his income).

Plaintiff's attempt to rely upon the Retainer Agreement and Arbitration in support of his claim of waiver faces a further hurdle. The Retainer Agreement's arbitration provisions apply only to "disputes arising out of or connected with our attorney client relationship and/or this retainer agreement." As a result, the arbitration provision does not apply to this action, which involves the separate question of whether Defendant is entitled to receive a bankruptcy discharge. As explained in *Rindlisbacher*: "A debtor's pursuit of a discharge is not a breach of the duty to pay; it is a right provided by the Bankruptcy Code. By seeking a discharge the client does not in any way call into question the validity of the attorney's fee or the attorney's actions. He merely seeks to obtain a benefit that the law allows." *Rindlisbacher*, 225 B.R. at 183. Therefore, any waivers of the privilege during the Arbitration would be limited to the Arbitration.

In sum, Defendant did not waive the attorney-client privilege by executing the Retainer Agreement and participating in the Arbitration. Even if a waiver had occurred, such waiver was limited to the matters at issue in the Arbitration (the reasonableness of fees charged in the marital dissolution proceeding) and did not extend to the matters at issue in this action (whether Defendant made false representations to the Bankruptcy Court). Consequently, the Court maintains the finding, set forth in its *Preliminary Findings and Conclusions*, that Plaintiff's § 727(a)(4) claim is predicated upon confidential information and is barred by the attorney-client privilege. The Court will enter summary judgment in favor of Defendant.

### **III. Conclusion**

Based upon the foregoing, the Court will enter summary judgment in favor of

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Defendant. The Court will prepare and enter the summary judgment.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**Note 1**

Joseph Langlois is the principal of Langlois Family Law, APC. For simplicity, the Court refers to both Joseph Langlois and Langlois Family Law, APC as "Plaintiff."

**Note 2**

Defendant's objection that the Final Arbitration Award has not been properly authenticated is overruled. Plaintiff participated in the Arbitration, and Plaintiff's declaration sufficiently authenticates the Final Arbitration Award.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steve Lewis

Represented By  
Allan D Sarver

**Defendant(s):**

STEVE LEWIS

Represented By  
Allan D Sarver

**Plaintiff(s):**

LANGLOIS FAMILY LAW APC

Represented By  
Ray B Bowen Jr

**Trustee(s):**

Elissa Miller (TR)

Pro Se

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**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#2.00** Hearing re [436] Objection to Claim #17 by Claimant Evergreen Capital Assets LP. in the amount of \$ 1,306,037.35.

FR. 9-1-21; 10-6-21; 11-3-21; 12-8-21

Docket 0

**\*\*\* VACATED \*\*\* REASON: WITHDRAWN 1-14-22**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto

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**2:21-12463 J.H. Bryant Jr., Inc.**

**Chapter 11**

**#3.00** Hearing  
RE: [130] Post confirmation status conference

fr. 10-4-21

Docket 130

**\*\*\* VACATED \*\*\* REASON: CONTINUED 7-12-22 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

J.H. Bryant Jr., Inc.

Represented By

Zev Shechtman

Michael G D'Alba

Aaron E DE Leest

Alphamorlai Lamine Kebeh

**Trustee(s):**

Susan K Seflin (TR)

Pro Se

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**2:21-12812 Corporate Colocation Inc**

**Chapter 11**

Adv#: 2:21-01118 530 6th Street LLC v. Corporate Colocation Inc

**#4.00** Status Hearing

RE: [1] Adversary case 2:21-ap-01118. Notice of Removal by 530 6th Street LLC. Nature of Suit: (14 (Recovery of money/property - other)) (Yaspan, Robert)

FR. 8-17-2; 9-15-21;10-13-21

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED 3-9-22 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**Defendant(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**Plaintiff(s):**

530 6th Street LLC

Pro Se

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**2:21-12812 Corporate Colocation Inc**

**Chapter 11**

Adv#: 2:21-01119 530 6th Street LLC v. Corporate Colocation Inc

**#5.00** Status Hearing

RE: [1] Adversary case 2:21-ap-01119. Notice of Removal by 530 6th Street LLC. Nature of Suit: (14 (Recovery of money/property - other)) (Yaspan, Robert)

FR. 8-17-21; 9-15-21; 10-13-21

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED 3-9-22 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**Defendant(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**Plaintiff(s):**

530 6th Street LLC

Pro Se



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**2:21-12812 Corporate Colocation Inc**

**Chapter 11**

Adv#: 2:21-01120 530 6th Street LLC v. Corporate Colocation Inc

**#6.00** Status Hearing

RE: [1] Adversary case 2:21-ap-01120. Notice of Removal by 530 6th Street LLC. Nature of Suit: (14 (Recovery of money/property - other)) (Yaspan, Robert)

fr. 8-17-2; 9-15-21; 10-13-21

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED 3-9-22 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**Defendant(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**Plaintiff(s):**

530 6th Street LLC

Pro Se

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**2:21-12812 Corporate Colocation Inc**

**Chapter 11**

Adv#: 2:21-01121 Corporate Colocation Inc v. 530 6th Street LLC et al

**#7.00** Status Hearing  
RE: [1] Adversary case 2:21-ap-01121. Notice of Removal by Corporate Colocation Inc. Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Yaspan, Robert)

FR. 8-17-21; 9-15-21; 10-13-21

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED 3-9-21 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**Defendant(s):**

530 6th Street LLC

Pro Se

DOES 1 through 100, inclusive

Pro Se

**Plaintiff(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

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**2:21-12812 Corporate Colocation Inc**

**Chapter 11**

Adv#: 2:21-01166 Corporate Colocation Inc v. 530 6th Street LLC

**#8.00** Status Hearing

RE: [1] Adversary case 2:21-ap-01166. Complaint by Corporate Colocation Inc against 530 6th Street LLC. (\$350.00 Fee Charge To Estate). (Attachments: # 1 Exhibit 1-2 # 2 Exhibit 3-5) Nature of Suit: (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)),(21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment))(Yaspan, Robert)

fr. 10-12-21; 10-13-21

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED 3-9-22 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**Defendant(s):**

530 6th Street LLC

Pro Se

**Plaintiff(s):**

Corporate Colocation Inc

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, January 19, 2022**

**Hearing Room 1568**

10:00 AM

**2:21-17188 Nancy C Dunlap**

**Chapter 11**

**#9.00** Hearing RE: [12] Motion to Use Cash Collateral

Docket 12

**Tentative Ruling:**

1/18/2022

**Note: Unless otherwise notified all parties must appear by telephone. The courtroom is undergoing renovation. All parties are directed to contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Debtor is authorized to use cash collateral on an interim basis through and including April 27, 2022. A hearing on the use of cash collateral subsequent to April 27, 2022 shall take place on **April 20, 2022, at 10:00 a.m.** Having reviewed the docket, the Court finds it appropriate to set a deadline for the Debtor to file a disclosure statement and plan of reorganization by **April 13, 2022.**

The Debtor shall submit further evidence in support of the continued use of cash collateral, including an updated Budget, by no later than March 30, 2022. By that same date, the Debtor shall provide notice of the continued hearing and shall file a proof of service so indicating. Opposition to the continued use of cash collateral is due by **April 6, 2022**; the Debtor's reply to any opposition is due by **April 13, 2022.**

**Pleadings Filed and Reviewed**

- 1) Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [11 U.S.C. § 363] [Doc. No. 12] (the "Motion")
- 2) Notice of Hearing For: Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [11 U.S.C. § 363] [Doc. No. 13]
- 3) Objection to Debtor's Motion for Authority to use Cash Collateral (the "Objection") [Doc. No.30]
- 4) Reply to Opposition of U.S. Bank National Association to Debtor's

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**CONT...**

**Nancy C Dunlap**

**Chapter 11**

Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash  
Collateral (the "Reply") [Doc. No. 31]

**I. Facts and Summary of Pleadings**

**A. Background**

Debtor and Debtor-in-Possession Nancy C Dunlap (the "Debtor") filed her voluntary chapter 11 petition on September 13, 2021. (Doc. No. 1). The Debtor has rental property and is making mortgage, property tax, property insurance, and maintenance/utility fee payments. Motion at 4. The rental property is located at 1911 Bataan Road, Unit A Redondo Beach, CA 90278 (the "Property"). The Debtor's Property is subject to a lien held by Shellpoint Mortgage Servicing (the "Lien Holder"). Pursuant to court order (discussed below) Debtor is currently making monthly payments of \$2,000 to the Lien Holder and she is paying property tax and insurance totaling approximately \$3,179.65 each month. *Id.* In total, Debtor's monthly expenses relating to the Property is \$3,502.65. *Id.* Debtor's net income from the Property is \$2,497.35. *Id.*

**B. The Debtor's Motion**

On September 24, 2021, the Debtor filed her motion requesting use of cash collateral to pay the Debtor's ordinary and necessary expenses relating to the rental Property. That motion was granted on an interim basis (see Order Docket No. 21 filed 10/25/21 - the "Order" or "Original Order"). The Order set January 19, 2022 as the continued date for the further use of cash collateral. The Debtor has not filed additional papers in connection with this hearing. The Lien Holder filed its objection - presumably to the Original Motion which the Court will construe as an opposition to the continued hearing. The Debtor filed her reply to the objection.

Although unclear, it appears that the numbers reflected in the original cash collateral motion have not changed. The Debtor's income from the Property is \$6,000. Pursuant to the Order, Debtor is making adequate protection payments in the total amount of \$3,279.65 Net monthly income is \$2,497.35.

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CONT...

**Nancy C Dunlap**

**Chapter 11**

**C. The Objection**

On January 5, 2022, the Lien Holder filed its Objection. The Lien Holder objects to Debtor's request, stating the Debtor's default as related to the Property should prevent the Debtor from utilizing the Property and any rents or profits arising from it.

Additionally, the Lien Holder objects to the Debtor's definition of adequate protection payments, stating the proposed \$2,000 per month is inadequate as the Debtor's interest only monthly payments under the loan amount to \$5,792.75. The Lien Holder additionally states that the Debtor's Motion fails to define an event of default. The Lien Holder posits that an adequate protection payment received in less than the full amount due each month or received later than the fifteenth day in the month in which it was due is a default. In addition, the Objection seeks to define a Termination Event as: (i) entry of an order granting relief from the stay; and (ii) Debtor's failure to make adequate protection payments to any secured party as required under the order. The Lien Holder additionally requests that upon an occurrence such as a dismissal, the Debtor have no right to use cash collateral whether or not it receives notice.

**D. Debtor's Reply**

On January 12, 2022, Debtor filed its Reply to the Objection. Debtor states that the Property has a fair market value of \$1,290,000.00 and a total of \$1,007,514.18 in liens on the Property. The Debtor states that the Property is protected by an equity cushion of approximately \$282,485.82, therefore adequate protection payments are not required. Debtor states that the equity cushion in combination with the \$2,000.00 monthly adequate protection payments provides adequate protection to the Lien Holder.

**II. Findings of Fact and Conclusions of Law**

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Dev. Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir.

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**CONT... Nancy C Dunlap**

**Chapter 11**

1987). Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of § 363 – that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 382 (1988).

The Lien Holder's interest is protected by approximately \$221,240 in equity, providing an adequate equity cushion. Although this equity cushion exists and the Debtor has proposed and is making adequate protection payments in the amount of \$3,279.95 a month, the Court finds that the adequate protection payment should be increased since the Monthly Operating Report filed by the Debtor shows that net income from the Property is being used for personal expenses.. Debtor states that there is net income of \$2,497.35 on the Property. This should be paid to the Lien Holder, in addition to the amounts originally ordered.

### **III. Conclusion**

Based upon the foregoing, the Debtor is authorized to use cash collateral in accordance with the Original Order and this order through and including April 27, 2022. A hearing on the use of cash collateral subsequent to April 27, 2022 shall take place on **April 20, 2022, at 10:00 a.m.**

The Debtor shall submit further evidence in support of the continued use of cash collateral, including an updated Budget, by no later than March 30, 2022. By that same date, the Debtor shall provide notice of the continued hearing and shall file a proof of service so indicating. Opposition to the continued use of cash collateral is due by April 6, **2022**; the Debtors' reply to any opposition is due by **April 13, 2022**.

Further relief requested by the Lien Holder in its opposition is DENIED without prejudice.

The Debtor shall submit a conforming order, incorporating this tentative ruling



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**CONT... Nancy C Dunlap**

**Chapter 11**

by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
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**Debtor(s):**

Nancy C Dunlap

Represented By  
Onyinye N Anyama

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10:00 AM

**2:21-18868 Weed Cellars, Inc.**

**Chapter 7**

**#10.00** HearingRE: [17] Motion to Reject Lease or Executory Contract Motion by Chapter 7 Trustee for Order Extending Time to Assume or Reject Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365(d)(1); Memorandum of Points and Authorities and Declaration of Elissa D. Miller in Support Thereof (Sokol, Robyn)

Docket 17

**Tentative Ruling:**

1/18/2022

**Note: Parties must appear by telephone. The courtroom is undergoing renovation. To make a telephonic appearance, parties should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Chapter 7 Trustee's motion for an extension of the deadline to assume or reject executory contracts and unexpired leases of residential real property or of personal property is **GRANTED** in its entirety.

**Pleadings Filed and Reviewed:**

- 1) Motion by Chapter 7 Trustee for Order Extending Time to Assume or Reject Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365(d)(1) [Doc. No. 17] (the "Motion")
  - a) Order Setting Hearing on Chapter 7 Trustee's Motion to Extend Deadline to Assume or Reject Executory Contracts and Unexpired Leases [Doc. No. 21]
  - b) Declaration of Lydia Moya Re Service of Notice of Hearing on Shortened Time on Motion by Chapter 7 Trustee for Order Extending Time to Assume or Reject Executory Contracts and Unexpired Leases [Doc. No. 24]
- 2) No opposition to the Motion is on file as of the date of issuance of this tentative ruling

**I. Facts and Summary of Pleadings**

On November 23, 2021 (the "Petition Date"), Weed Cellars, Inc. (the "Debtor") filed a voluntary Chapter 7 petition. The Debtor is *not* a marijuana dispensary or

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**CONT... Weed Cellars, Inc.**

**Chapter 7**

business. Prior to the Petition Date, the Debtor's business consisted of operating lounges for hire, distributing a line of alcoholic beverages with branding that used variations of names and logos containing the word "Weed," and obtaining intellectual property protection for its Weed-branded alcoholic beverages. Elissa D. Miller has been appointed as the Chapter 7 Trustee (the "Trustee"). On December 3, 2021, the Court granted the Trustee's motion to abandon and to reject two leasehold interests in which the Debtor operated its business. Doc. No. 11.

The Trustee moves for 90-day extension of the deadline to assume or reject executory contracts or unexpired leases of residential real property or of personal property (the "Assumption/Rejection Deadline"). The Trustee recently learned that the Debtor had entered into a number of agreements that may be executory contracts which were not listed on the Debtor's schedules. The Trustee states that she requires additional time to investigate these agreements before determining whether to assume or reject them.

As of the date of issuance of this tentative ruling, no opposition to the Motion is on file.

## **II. Findings of Fact and Conclusions of Law**

Section 365(d)(1) requires the Trustee to assume or reject an executory contract or unexpired lease of residential real property or of personal property within sixty days after the order for relief. This deadline may be extended "for cause," provided that the extension is granted before expiration of the deadline. § 365(d)(1).

Here, the initial Assumption/Rejection Deadline expires on January 22, 2022 (sixty days subsequent to the November 23, 2021 Petition Date). The Trustee's request for an extension of the Assumption/Rejection Deadline is timely. The Court finds that the Trustee has shown sufficient cause for an extension of the deadline. The Trustee has discovered that the Debtor entered into a number of agreements that were not listed on the Debtor's schedules. The Court finds it appropriate to extend the Assumption/Rejection Deadline to provide the Trustee additional time to investigate such agreements before making a decision on whether they should be assumed or rejected.

The Assumption/Rejection Deadline is extended by ninety days, to and including April 22, 2022, as requested by the Trustee. Within seven days of the hearing, the Trustee shall submit a proposed order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you

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**CONT... Weed Cellars, Inc.**

**Chapter 7**

intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
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**Debtor(s):**

Weed Cellars, Inc.

Represented By  
Varand Gourjian

**Trustee(s):**

Elissa Miller (TR)

Represented By  
Robyn B Sokol

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**2:22-10132 Phenomenon Marketing & Entertainment, LLC**

**Chapter 11**

**#11.00** Hearing  
RE: [7] Motion to Reject Lease or Executory Contract (Berger, Michael)

Docket 7

**\*\*\* VACATED \*\*\* REASON: MOTION HEARD ON 1-14-2022**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Phenomenon Marketing &

Represented By  
Michael Jay Berger

**Trustee(s):**

Susan K Seflin (TR)

Pro Se

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10:00 AM

**2:22-10132 Phenomenon Marketing & Entertainment, LLC**

**Chapter 11**

**#12.00** Hearing RE: [18] Debtor's Emergency Motion For Order Authorizing Payment Of Wages And Related Expenses Pursuant To 11 U.S.C Section 507(A)(4)(A)

Docket 18

**Tentative Ruling:**

1/18/2022

**Note: Parties must appear by telephone. The courtroom is undergoing renovation. To make a telephonic appearance, parties should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Subject to any opposition which may be presented at the hearing, the Court is prepared to **GRANT** the Debtor's motion to pay prepetition wages.

**Pleadings Filed and Reviewed:**

- 1) Debtor's Emergency Motion for Order Authorizing Payment of Wages and Related Expenses Pursuant to 11 U.S.C. § 507(a)(4)(A) [Doc. No. 18] (the "Motion")
  - a) Order Setting Hearing on Debtor's Motion to Pay Prepetition Wages [Doc. No. 14]
  - b) Declaration of Yathida Nipha Regarding Telephonic Notice and E-mail Service of Debtor's Emergency Motion for Order Authorizing Payment of Wages and Related Expenses Pursuant to 11 U.S.C. § 507(a)(4)(A) [Doc. No. 22]
- 2) Opposition may be presented at the hearing

**I. Facts and Summary of Pleadings**

On January 10, 2022 (the "Petition Date"), Phenomenon Marketing & Entertainment, LLC (the "Debtor") filed a voluntary Chapter 11 petition and elected treatment under Subchapter V. On January 10, 2022, the United States Trustee appointed Susan K. Seflin as the Subchapter V Trustee. Doc. No. 10. The Debtor is a marketing agency. The filing of the petition was precipitated by a decline in the

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**CONT... Phenomenon Marketing & Entertainment, LLC Chapter 11**

Debtor's net revenue from approximately \$22 million in 2019 to approximately \$13 million in 2020. The Debtor projects that net revenue for 2021 will be approximately \$13 million.

The Debtor seeks authorization to pay the prepetition wages of 25 employees, none of whom are insiders. The payroll covers the period from January 1, 2022 through January 15, 2022. (The Debtor sought bankruptcy protection on January 10, 2022, so only the wages incurred between January 1 and January 10 constitute prepetition wages.) The total net sum that the Debtor seeks to pay to its employees is approximately \$90,787.

## **II. Findings of Fact and Conclusions of Law**

Section 507(a)(4) designates "wages, salaries, or commissions, including vacation, severance, and sick leave pay" that are earned by an individual "within 180 days before the date of the filing of the petition" as a fourth-priority claim, subject to a limit of \$13,650 for each claimant. A leading national bankruptcy treatise explains:

[B]ecause wages are priority claims, courts have often permitted debtors to pay prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be difficult to justify "first day" orders approving payments of prepetition wages. There is no clear statutory authority for such first day orders, although a court with some confidence in the debtor's ability to satisfy claims through the third priority could justify the order under section 105.

Collier on Bankruptcy ¶ 507.06[2] (16th rev'd ed. 2021).

Local Bankruptcy Rule 2081-1(a)(6) requires that a motion seeking authorization to pay prepetition wages be supported by evidencing establishing the following:

- a) The employees are still employed;
- b) The necessity for payment;
- c) The benefit of the procedures;
- d) The prospect of reorganization;
- e) Whether the employees are insiders;



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**CONT...**

**Phenomenon Marketing & Entertainment, LLC**

**Chapter 11**

- f) Whether the employees' claims are within the limits established by 11 U.S.C. § 507;
- g) The payment will not render the estate administratively insolvent.

LBR 2081-1(a)(6).

Having reviewed the declaration Ranvir Gujral, the Debtor's authorized representative, the Court finds that the Debtor has established the necessity of paying the prepetition wages as requested in the Motion. The employees at issue remain employed. The Debtor's failure to timely pay prepetition wages would be detrimental to morale and would likely cause some employees to depart, which would disrupt the Debtor's ability to complete ongoing construction projects. *See In re CEI Roofing, Inc.*, 315 B.R. 50, 61 (Bankr. N.D. Tex. 2004) ("Thus, there has evolved a rule for the payment of prepetition wages and benefits which is based on both common sense and the express provisions of the Bankruptcy Code. If employees are not paid, they will leave. If they leave the Debtor's business, the bankruptcy case fails shortly after the filing. No one will benefit from the process."). Because the Debtor's business continues to generate revenue, it does not appear that the payments will render the estate administratively insolvent; in this respect, the Court notes that the Debtor has substantially reduced its operating expenses by rejecting an expensive office lease. The proposed payments are within the \$13,650 limit established by § 507(a)(4). The showing made by the Debtor as to its prospects for reorganization is sufficient to support payment of the wages.

### **III. Conclusion**

Subject to any opposition which may be presented at the hearing, the Court is prepared to **GRANT** the Motion in its entirety. Within seven days of the hearing, the Debtor shall submit a proposed order incorporating this tentative ruling by reference.

<b>Party Information</b>
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**Debtor(s):**

Phenomenon Marketing &

Represented By  
Michael Jay Berger

**Trustee(s):**

Susan K Seflin (TR)

Pro Se